

**COMPOSITE  
ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

In the matter of the complaint against the property assessment as provided by the *Municipal Government Act*, (MGA) Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the Act).

**between:**

**6914861 Canada Inc. (as represented by Altus Group Ltd.), COMPLAINANT**

**and**

**The City Of Calgary, RESPONDENT**

**before:**

**C. J. Griffin, PRESIDING OFFICER**

**R. Deschaine, MEMBER**

**R. Roy, MEMBER**

This is a complaint to the *Composite Assessment Review Board* (CARB) in respect of a property assessment prepared by the Assessor of The City of Calgary and entered in the 2011 Assessment Roll as follows:

**ROLL NUMBER: 200383487**

**LOCATION ADDRESS: 33 Heritage Meadows Way SE**

**HEARING NUMBER: 64234**

**ASSESSMENT: \$61,100,000.**

This complaint was heard on 6<sup>th</sup> day of October, 2011 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 2.

Appeared on behalf of the Complainant:

- D. Hamilton

Appeared on behalf of the Respondent:

- K. Gardiner

**Preliminary Matter(s):**

Two matters of a Preliminary nature were brought forth:

1) The Assessor brought forward a matter relating to the Rebuttal Evidence of the Complainant which the Assessor maintains contains lease data; however, the lease rate was not introduced as an issue in their initial disclosure. This means that the Assessor does not have an opportunity to introduce any lease data to defend their position.

The Complainant maintains that although leases were not specifically identified as being an issue, rental rates were so identified and rental/lease rates are, for the most part, synonymous terms and they should be allowed by the CARB.

The CARB agrees with the Complainant that, for the purposes of these Hearings, the difference between rental rate and lease rate is somewhat questionable; therefore, in fairness to both parties the CARB would permit the Rebuttal Evidence to be submitted but only such weight as is deemed appropriate will be given to the lease data in question.

2) Both parties requested that, for matters of expedience and based upon the fact that the evidence is the same, the evidence in chief, argument, questions and answers from the preceding Hearing (#2224-2011-P) be carried forward to this Hearing.

The CARB concurs with the parties on this matter but notes that the Rebuttal evidence of the Complainant that was disallowed in the preceding Hearing has been properly filed and exchanged and will be heard in this Hearing.

**Property Description:**

According to the Assessment Summary Report (Exhibit C-1 pg. 11) the subject property is described as being a retail shopping centre – power with a quality rating of A2. There are nine main components of the property, which were constructed in 2004, 2006 and 2007. For assessment purposes the property is said to consist of: bank space of 6,619 Sq. Ft., CRU space in the 1,001 – 2,500 Sq. Ft. range totalling 15,841 Sq. Ft., CRU space in the 2,501 – 6,000 Sq. Ft. range totalling 9,703 Sq. Ft., CRU space in the 6,001 – 14,000 Sq. Ft. range totalling 25,832 Sq. Ft., Jr. Big Box space in the 14,001 Sq. Ft. to 50,000 Sq. Ft. totalling 102,420 Sq. Ft., restaurant/dining lounge space totalling 2,060 Sq. Ft. and restaurant/fast food space totalling 12,339 Sq. Ft., all of which totals 174,814 Sq. Ft. The underlying site is 16.42 acres in size.

The property has been assessed through application of the Income Approach with the following rental rate inputs:

CRU	1,001 – 2,500 Sq. Ft.	\$42/Sq. Ft.
CRU	2,501 – 6,000 Sq. Ft.	\$33/Sq. Ft.
CRU	6,001 – 14,000 Sq. Ft.	\$24/Sq. Ft.
Jr. Big Box	14,000 – 50,000 Sq. Ft.	\$21/Sq. Ft.
Restaurant Dining Lounge		\$36/Sq. Ft.
Restaurant Fast Food		\$40/Sq. Ft.
Bank		\$32/Sq. Ft.
Vacancy Rate		1%
Operating Costs		\$ 9/Sq. Ft.
Non Recoverable Allowance		1% of Effective Net Income
Capitalization Rate		7.25%

**Issues:**

While there are a number of interrelated issues attached to the Assessment Review Board Complaint form, the Complainant indicated at the Hearing that the issues to be considered by the CARB are reduced to:

1. The assessed rental rates applied to the CRU, restaurant and Jr. Big Box spaces are not equitable with similar spaces in other Power Centres in the municipality.
2. The assessed capitalization rate of 7.25% is too low and should be increased to 7.75%.

**Complainant's Requested Value:** \$ 46,510,000. (revised at the Hearing)

**Party Positions:****Complainant's Position**

With regard to the assessed CRU, restaurant and Jr. Big Box spaces the Complainant indicated to the CARB that the majority of the leases pertaining to said spaces are dated and not indicative of market conditions as at the valuation date. The Complainant contends that the various rental rates applied by the Assessor are not equitable to other south Calgary located Power Centres, specifically *South Trail Crossing* and *Shawnessy Power Centre*. The Complainant is requesting, based upon their interpretation of equity, the following rental rates be applied to the subject property:

	<u>Assessed</u>	<u>Requested</u>
CRU 1,001 – 2,500 Sq. Ft.	\$42/Sq. Ft.	\$30.00/Sq. Ft.
CRU 2,501 – 6,000 Sq. Ft.	\$33/Sq. Ft.	\$28.00/Sq. Ft.
CRU 6,001 – 14,000 Sq. Ft.	\$24/Sq. Ft.	\$23.00/Sq. Ft.
Jr. Big Box 14,000 – 50,000 Sq. Ft.	\$21/Sq. Ft.	\$17.00/Sq. Ft.
Restaurant Dining Lounge	\$36/Sq. Ft.	\$26.50/Sq. Ft.
Restaurant Fast Food	\$40/Sq. Ft.	\$28.00/Sq. Ft.
Bank	\$32/Sq. Ft.	\$32.00/Sq. Ft.

In support of the requested rates the Complainant introduced (Exhibit C-1 pgs. 29 – 37) the assessed rental rates for similar properties located within the above mentioned competing Power Centres and which, the Complainant suggests, fully supports their requested rates. Additionally the Complainant provided (Exhibit C-1 pgs. 38 – 45) a copy of a recent CARB decision (#0985/2011-P) wherein a reduction from \$37/Sq. Ft. to \$32/Sq. Ft. to the assessed rental rate for bank space was granted in the northeast Power Centre known as Country Hills Town Centre.

With regard to the issue of the assessed capitalization rate, the Complainant provided (Exhibit C-1 pgs. 51 – 53) several references, including the *British Columbia Supreme Court* (BCSC), the *Alberta Municipal Government Board* (MGB) and *University of British Columbia* (UBC) – Real Estate Division which support the methodology employed by the Complainant to complete their *2011 Power Centre Capitalization Rate Study* (Study). Additionally the Complainant provided (Exhibit C-1 pgs. 57 – 58) extracts from the *2008/09 Retail Capitalization Rate Document*, as prepared by the City of Calgary, outlining the process to be used to derive capitalization rates, which the Complainant maintains is the same methodology they have employed in their study. That process, as indicated in the aforementioned document is outlined as follows:

*"The Income and Expense data as returned to The City of Calgary, by the owner (Vendor) through the annual Request for Information as per [MGA 295 (1), (2), (3), (4) Duty to Provide Information] was recorded and analyzed as follows*

1. *Contract Income; as reported and collected by the owner;*
  - *Net Rental Rate x Square Footage Area Leased;*
2. *PGI (Potential Gross Income); if there was vacant space in the building at the time of sale, the PGI was calculated based on the leases in place with the assumption that the vacant space will lease up at market rents;*
3. *EGI (Effective Gross Income); calculated by reducing (stabilizing) the PGI by typical vacancy;*
4. *NOI (Net Operating Income); calculated by reducing (stabilizing) the EGI by 1% for non-recoverable expenses and vacancy shortfall;*
5. *The NOI was then divided by the sale price to determine the capitalization rates.*
6. *The median of the capitalization rates is then determined and applied to the population."*

Having employed this methodology the Complainant provided (Exhibit C-1 pg. 83) their Study which provides the results of analyzing three (3) Power Centre sales that were recorded between July 2009 and February 2010. The properties analyzed in this study were: 1) 800 Crowfoot Cres. NW, 2) 20 & 60 Crowfoot Cres. NW and 3) 140 Crowfoot Cres. NW. Their analysis derived respective capitalization rates for these properties of: 1) 7.28% 2) 8.35% and 3) 7.75% and indicated a mean of 7.80%, a weighted mean of 7.95% and a median of 7.75%. The sales summary document, Assessment Request for Information (ARFI) and/or the rent roll for each of the properties is provided (Exhibit C-1 pgs. 61 – 81) in support of their analysis.

### **Respondent's Position**

The Assessor outlined their position as it relates to the two issues to be considered as follows: 1) the subject Power Centre is superior to other Power Centres in the city and equity has been maintained by employing assessed rental rates that are consistent within this Power Centre and 2) the Complainant has determined their capitalization rate study on a Leased Fee basis while the Assessor is mandated to determine the Fee Simple capitalization rate.

Further to their position regarding the equity issue, the Respondent maintains that the location of the subject *Deerfoot Meadows Power Centre*, with direct vehicle access from both Deerfoot Trail and Heritage Drive and indirect, but simple, vehicular access from Glenmore Trail and Blackfoot Trail is unmatched by any other location in the city. The foregoing being supported (Exhibit R-1 pgs. 30 – 33) by maps and aerial photographs. The Respondent also points out that *Deerfoot Meadows* is the home to *Ikea*, a huge 300,000+ Sq. Ft. home improvement/decorating/furnishings super store that, being the only such store in the city, attracts shoppers from all parts of the city and beyond. *Deerfoot Meadows* is clearly superior to other Power Centres in the city and this is manifested in the superior rents it is able to generate. Equity is maintained by applying the various categories of assessed rental rates consistently within that same Power Centre and this has been done (Exhibit R-1 pg. 78). To show that different rental rates are applied to, in this case, Jr. Big Box stores in different locations throughout the city, the Respondent introduced (Exhibit R-1 pg. 102) a copy of the assessment for such a property located at 11728 Sarcee Tr. NW reflecting a \$22/Sq. Ft. rate.

With regard to the capitalization rate issue, the Respondent presented (Exhibit R-1 pg. 104) a copy of the *City of Calgary Assessment 2011 Summary Capitalization Rates* which shows a capitalization rate of 7.25% being appropriate for Power Centre properties. This same report also outlines the published capitalization rates for various retail property categories as analysed by three well regarded national real estate companies (*CB Richard Ellis, Colliers & Altus Insite*) which show a second quarter 2010 range for Power Centres of 6.50% to 7.25%. The Assessor acknowledged that this information is not relied upon by the Assessment Department, but rather is used as a check for their own analyses. The Assessor presented (Exhibit R-1 pg. 105) their *2011 Power Centre Capitalization Rate Summary* which summarizes four sales that have been analyzed by the Assessor. The Assessor acknowledges that one of these sales, 95 Crowfoot Cr. NW is post-facto to the valuation date but it is included for trending purposes. The three (3) other properties analyzed for this capitalization rate study include: 1) 16061 MacLeod Tr. SE, 2) 20, 60 & 140 Crowfoot Cr. NW and 3) 800 Crowfoot Cr. NW. It should be noted that property #2 has also been analyzed by the Complainant but in their analysis they have treated the property as two independent sales, a position the Assessor does not agree with. The City's Capitalization Rate Summary shows the capitalization rates, as analyzed by the Assessor, to range from 6.34% to 7.97% indicating a median of 7.33% if the 95 Crowfoot property is not included and 6.84% if it is included. As an alternative they have also analyzed the sales based upon actual income at the time of sale and that analysis shows a range from 6.22% to 7.86% and indicating a median, excluding the 95 Crowfoot property, of 6.82%. Additionally the Respondent presented (Exhibit R-1 pg. 119) a copy of *Investment Trends Survey, Historical Perspective for Power Centres in Calgary*, as prepared by *Altus Insite*, which indicates a capitalization rate of 6.6% in the 3<sup>rd</sup> Quarter of 2010. The Respondent also produced (Exhibit R-1 pg. 120) a list of twenty-five (25) 2011 CARB decisions wherein the capitalization rate, for Power Centre properties, has been confirmed. The Respondent provided (Exhibit R-1 pg. 396) a *Power Centre Capitalization Rate Assessment to Sales Ratios, 7.25% v. 7.75%*. In this study the Assessor has determined the *Assessment to Sales Ratio (ASR)* for the four properties utilized in their capitalization rate study using time adjusted sales prices and their applied 7.25% capitalization rate. On the foregoing basis the ASRs range, including the 95 Crowfoot property, from 0.88 to 1.06 and indicate a median of 0.93. If the 95 Crowfoot property is removed then the range moves to 0.91 to 1.06 and the indicated median is 0.95. Applying the same type of analysis, using the hypothetical assessed values that would be indicated through application of the Complainant's requested 7.75% capitalization rate, the ASRs, including the 95 Crowfoot property, ranged from 0.82 to 1.00 and indicate a median of 0.87 and if the 95 Crowfoot property is removed the range moves to 0.86 to 1.00 with an indicated median of 0.88. Legislated standards dictate that a reasonable range in ASRs is from 0.95 to 1.05 and utilizing the Complainant's requested capitalization rate would result in ASRs outside this legislated requirement.

### **Complainant's Rebuttal:**

The Complainant introduced three (3) Rebuttal documents as follows: 1) Capitalization Rate Rebuttal (Exhibit C2), 2) 3<sup>rd</sup> Party Reports Rebuttal (Exhibit C3) and 3) Rebuttal Evidence for 33 Heritage Meadows Way SE (Exhibit C4). Recognizing that the Respondent does not rely upon 3<sup>rd</sup> party reports other than as a check for their own analysis, the Complainant withdrew Exhibit C3.

In their Capitalization Rate Rebuttal (Exhibit C-2) the Complainant introduced (Exhibit C-2 pg. 45) an extract from the *Alberta Assessor's Association Valuation Guide/Valuation Parameters, February 1999 (AAA Guide)* entitled *Determining Market Rents as of Valuation Date* which

states:

*"To determine the current market rent for each tenant, the following guidelines are provided (in order of descending importance):*

- 1. For most tenants the best source of market information is the rent roll. Using these rent rolls. The best evidence of "market" rents are (in order of descending importance):*
  - Actual leases signed on or around the valuation date.*
  - Actual leases within the first three years of their term as of the valuation date.*
  - Current rents for similar types of stores in the same shopping centre.*
  - Older leases with active overage rent or step-up clauses.*
- 2. As a secondary source of rent information, and as a check on the rents derived from the actual rent rolls, the rental rates can be compared to the rents established for similar tenants in other similar properties.*
- 3. If comparable information is not available, it may be necessary to analyse the existing lease and interview the owner and tenant(s) to determine what the current rent on the space should be."*

The Complainant then referred the CARB to Exhibit C-2 pgs. 19 & 21 which show a capitalization rate analysis prepared in 2010 compared to a similar study completed in 2011 wherein the same property is analysed but yields a capitalization rate of 6.67% in 2010 and 6.34% in 2011. The Complainant also pointed out (Exhibit C-2 pgs. 35 & 38) that the Assessor considered 140 Crowfoot Cres. and 20/60 Crowfoot Cres. as two independent sales in their 2010 Cap Rate Analysis but treats the same property as being one sale in their 2011 analysis. The Complainant went on to point out several additional examples of the Assessor being inconsistent in their analyses and how various sales have been treated differently from one year to the next.

In addition to the foregoing the Complainant introduced further Rebuttal evidence (Exhibit C-4) which high-lights lease comparables to support the requested \$17/Sq. Ft. Jr. Big Box rate being requested by the Complainant.

**Board's Decision:**

The assessment is **confirmed** at: **\$61,100,000.**

**Decision Reasons:**

The reader is referred to CARB Decision # 2224-2011-P as the reasons for that CARB decision are exactly the same as those for this case; however, to summarize:

- Issue 1.      The CARB agrees with the Respondent that "all Power Centres are not created equal" and that the subject Deerfoot Meadows does have a superior location compared to other power centres located in the city. Equity is maintained by evenly applying the various assessed rental rates, by category, to properties located within the same power centre.
- Issue 2.      The Respondent explained that from time to time new or additional information relating to a sale might be forthcoming and this can lead to a different analytical conclusion from one year to the next. In terms of the capitalization rate, if the two

Crowfoot properties are treated as one sale, as the CARB agrees, and the Macleod Tr. sale is also included then the Complainant's median capitalization rate (Exhibit C-1 pg. 83) becomes 7.28% which is, in the judgment of the CARB, much more supportive of the assessed capitalization rate of 7.25% than it is of the requested 7.75% capitalization rate.

DATED AT THE CITY OF CALGARY THIS 28 DAY OF October 2011.

  
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C. J. Griffin,  
Presiding Officer

**APPENDIX "A"****DOCUMENTS PRESENTED AT THE HEARING  
AND CONSIDERED BY THE BOARD:**

<b>NO.</b>	<b>ITEM</b>
1. C1	Complainant's Disclosure
2. C2	Complainant's Rebuttal
3. C3	Complainant's Rebuttal
4. C4	Complainant's Rebuttal
5. R1	Respondent's Disclosure

*An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.*

*Any of the following may appeal the decision of an assessment review board:*

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

*An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to*

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*